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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/313,184	05/18/1999	KANAME MIWA	Q54404	3561

7590

10/21/2002

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EXAMINER

TUNG, TA HSUNG

ART UNIT

PAPER NUMBER

1743

20

DATE MAILED: 10/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/313,184

Applicant(s)

MIWA BTAL

Examiner

T. TUNG

Group Art Unit

1743

Paper No. 20

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on 9-6-02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 16-20, 22-24, 30-35 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 16-20, 22-24, 30-35 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
  - ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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Claims 32-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims are not distinct from each other in that the different intended uses recited in the preambles impart no structural distinction. Also, a voltage range is by nature a process consideration. Therefore, different voltage ranges do not recite structural distinction.

Applicant argues that claims 32-34 are distinct from claims 16-20, 22-24, 30 and 31. While that is true, it is also moot. The rejection is that claims 32-34 are non-distinct from each other, not that claims 32-34 are non-distinct from the other pending claims.

Claims 30-35 are rejected under 35 U.S.C. 102(a) as being anticipated by Kato et al 5,672,811.

Applicant argues that while electrode 28 is shown to be larger than electrode 24, it is not evident that the ratio between their sizes serves to minimize the sensor element resistance, since size ratios outside of the instant claimed range would not minimize the sensor element resistance. Further, Kato does not recognize or teach the importance of the electrodes' relative sizes.

This argument is not persuasive. It is evident from figure 2 of Kato that electrode 28 is shown to be only slightly larger than twice the size of electrode 24. Such a size ratio would clearly fall within applicant's claimed range (2:1 to 5:1 when electrode 28 is considered to be the negative electrode; 1:2 to 1:5 when electrode 24 is considered to be the negative electrode). That being the case, Kato's electrodes will inherently minimize the sensor element resistance and it is

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totally irrelevant whether the patent recognizes or teaches the importance of the electrodes' relative sizes.

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kato etal '811.

Applicant does not make a separate argument for this rejection. Thus, no further comment is needed.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kato etal '811 in view of Yagi etal 5,384,630.

Here also, no separate argument has been presented.

Claims 16-20, 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kato etal '811 in view of Japan 5-87773 or Mase etal 4,657,659.

Here again, no separate argument has been made.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however,

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will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The examiner can be reached at 703-308-3329. His supervisor Jill Warden can be reached at 703-308-4037. Any general inquiry should be directed to the receptionist at 703-308-0661. A fax number for TC 1700 is 703-872-9311.



Ta Tung

Primary Examiner

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